



**Weld County
District Attorney's Office
Nineteenth Judicial District**

Kenneth R. Buck – District Attorney
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September 16, 2014

Chief Jerry Garner
Greeley Police Department
2875 W. 10th Street
Greeley, CO 80634

**RE: Investigation of the shooting of Jacinto
Zavala at 1307 4th Street, Greeley, Colorado on,
August 13, 2014**

Dear Chief Garner:

The investigation and legal analysis of the Jacinto Zavala shooting is complete, and pursuant to applicable Colorado law, I will not file criminal charges against the officers who fired their weapons in this incident. I have included a summary of the facts in this case and the relevant Colorado law in this letter.

The Greeley Police Department has a policy of not releasing the names of police officers involved in the use of lethal force under any circumstances. I have determined that, under the circumstances presented in this investigation, I will also not release the names of the officers involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act requires disclosure of records of official actions by criminal justice agencies. These cases are not directly on point as the release of the officers' names alone does not fall squarely within the Criminal Justice Records Act. They are, however, informative in analyzing whether such disclosure is appropriate. Each of those cases require a custodian of criminal justice records to undertake a balancing test prior to the disclosure of criminal justice records and the information contained therein. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

When I engaged in this balancing test, I was persuaded that the privacy interests of the individuals who may be impacted by a decision to allow inspection (i.e. the officers involved in this incident) outweigh the other four factors to be considered. The continued safety of the officers and their families is of paramount concern in this case as there is substantial and credible information that Jacinto Zavala's family has numerous ties to gangs in the City of Greeley, and that these gangs have indicated their interest in learning the names of the officers involved for purposes of exacting retribution for this incident. Therefore, I will not release the names of these officers, and they will be referred to as Officers One, Two and Three in the remainder of this report. Officer One has previously

been involved in one officer involved shooting incident, while Officers Two and Three have not been previously involved in any shooting incident.

SUMMARY OF INVESTIGATION

On August 13, 2014 at 2:47 a.m., Weld County Communications received a 911 call from Anthony Erebia, in which he reported that his cousin, Jacinto Zavala, was outside the residence at 1307 4th Street, drunk with two or three guns, and that Zavala was shooting bullets. Erebia also told dispatchers that Zavala had previously been in the military, that he was suffering from PTSD, and that he believed he was in Afghanistan. Erebia told the dispatcher that Zavala was armed with an AR-15 rifle, and that he also had a knife. This information was provided to officers from the Greeley Police Department by dispatchers.

A short time later, dispatchers were able to get Zavala on the phone in an effort to reason with him. The following is an excerpt of the relevant portions of the conversation between the dispatcher and Zavala:

- 2:54: Zavala told the dispatchers that if the cops come over they are going to have a shootout. The dispatcher asks him to repeat what he just said, and he again stated “if the cops come over they are going to have a shootout.” When asked why, Zavala replied “because the cops are d_____ and they are taking away our rights.
- 2:57: “I don’t have a gun, I have a Taser.”
- 2:58: Zavala claimed not to have been in the military
- 3:04: Zavala stated he is not going to shoot anyone. He then said that if anything happened to him, “you’ll have a civil war on your hands.”
- 3:05: “I’m not going to shoot anyone because it’s wrong”
- 3:09: Zavala claimed that he was not going to shoot civilians or innocent people.
- 3:10: The dispatcher repeatedly asked what kind of gun he had, and he refused to tell her.
- 3:13: When asked if he will put his hands up and go outside, Zavala said “no.”
- 3:14: “I’m not the only one that is going to get shot up.” Zavala then said that when the cops shoot, his team is going to shoot.
- 3:15: Zavala claimed that he was out front with his hands up, but then stated that the gun is pointed down.
- 3:16: The dispatcher asked Zavala where the gun was. He said “in my right hand.” He then remarked that he was not going to put the gun down, and repeated that he had it pointed down.
- 3:19: In response to the initial challenges by a Greeley Officer, Zavala began yelling profane words across the street, apparently believing that he was yelling at a neighbor. In the background, an officer is heard yelling “get on the ground” and then gunshots are audible.

Throughout the 911 call, the dispatcher asked Zavala on numerous occasions to put the gun down. Each time Zavala refused. He also made repeated references to Mike Brown, the young man who was shot by police officers in Ferguson, Missouri, saying that he was an innocent man who refused to put his hands in the air.

During this conversation between dispatchers and Zavala, eight (8) Greeley Police Officers arrived in the area of 1307 4th Street. Officer One first aired over the radio at 3:02 a.m. that there was a man armed with a rifle in front of the residence. Officer One could also see a phone in the man's other hand and could hear that he was talking to dispatch. The dispatcher told Zavala on several occasions that he needed to put the gun down since officers were in the area, to which Zavala responded he's not going to put the gun down so that he can get shot.

Officer One and Officer Three took a position to the east of where Zavala was pacing back and forth on the front sidewalk of the residence, using a car for cover and concealment. Officer Two was immediately across the street to the south, using a tree in that front yard as cover, along with another officer.

At 3:19 a.m., officers made the determination that they needed to issue verbal commands to Zavala to get him to put down the weapon and place his hands in the air. An officer across the street to the south issued verbal commands, telling Zavala "Greeley Police, put down the gun, show me your hands." Zavala was heard on the phone yelling in return "Shut the f___ up." He then yelled "What mother f_____? If you come over here, I swear to God I'll f___ your s___ up you old man." Zavala then yelled "f_____ come over here old man. I will f___ your s___ up." At 3:19:42, officers were heard by dispatch yelling "get on the ground," followed almost immediately by the sound of gunfire.

Zavala was pronounced dead by medical personnel. A subsequent search of the crime scene determined that fourteen (14) total shots were fired by Greeley Police Officers. There were three (3) .45 caliber shell casings recovered from the location Officer One reportedly fired his handgun. Five (5) .223 caliber shell casings were recovered from the location where Officer Two reportedly fired his AR-15, and six (6) .223 caliber shell casings were recovered from the location where Officer Three reportedly fired his AR-15. No other unknown shell casings were recovered around the area where Zavala fell, nor inside the residence.

Crime scene investigators recovered a Daisy BB gun rifle from the location where Zavala fell following the shooting, and a knife from the top of a car just south of where Zavala fell.

An autopsy of Zavala was completed by a forensic pathologist. The pathologist determined that Zavala suffered eight (8) gunshot wounds: one grazing wound to the scalp; to the right lower leg; to the left thigh; two (2) to the left hand; one to the right lower back; one to the center area of the chest; and one to the right lower abdomen. A toxicology screen showed that Zavala's blood alcohol level at the time of his death was .220 g/dL.

Immediately following the incident, Officers One, Two and Three were segregated and taken separately back to the police department, where they were interviewed by the Chief Investigator from the District Attorney's Office and a detective from the Greeley Police Department.

Officer One stated that he and other officers took up a position in front of 1303 4th Street where he was concealed by a car parked in front of the home. From that position he could see Zavala, and could hear him yelling obscenities about the police. He described Zavala's tone as agitated and obviously angry. Officer One could see a rifle in Zavala's hand.

Officer One and another officer determined that verbal commands needed to be given to Zavala from the officers positioned across the street to the south of where Zavala was located. This would allow Officer One and the other officers positioned with him to move on Zavala undetected and take him into custody.

Officer One heard the challenge “Greeley Police” be issued, to which Zavala responded “I don’t give a f___.” Officers across the street illuminated Zavala with a flashlight, and ordered Zavala to drop the gun. He also heard Zavala say “if you come over here I’m going to f___ your s___ up.” At the same time he said this, Officer One saw Zavala raise the rifle from his right side and point it at the officers across the street. Officer One then heard a gunshot, and believed that Zavala was shooting at the other officers. He began firing his handgun at Zavala, and believed that he fired three (3) rounds. Officer One also stated that Officer Three simultaneously fired his rifle.

Officer Two stated that he was responding to the call in which dispatch advised that the suspect had PTSD, was drunk, and had an AR-15. As he was arriving in the area, he also heard dispatch advise that the suspect indicated he was going to have a shootout with police. This statement prompted him to take his department-issued AR-15 from his car. He and another officer took a position immediately across the street from 1307 4th Street. When he took cover across the street, he could not see Zavala, but could hear him say “I’m not going to shoot the cops,” and then make reference to “Michael Brown.”

Officer Two then saw Zavala pacing in front of 1307 4th Street with a rifle in his hand. The other officer positioned with Officer Two yelled to Zavala “Greeley Police” and “something like ‘show me your hands, or drop the gun.’” Zavala turned in Officer Two’s direction and yelled “f___ you.” He then yelled “come over here and I’ll f___ you up mother f___,” and Officer Two saw him raise his gun and point in at him and the other officer. Officer Two “thought for sure” he was going to be shot, so he fired his rifle. He believed he was the first officer to fire, and heard additional gunfire from the east of this position.

When asked about the lighting conditions, Officer Two said that it was very dark, and Zavala would move in and out of the ambient light in the area. He also said that Zavala was “very ramped up,” and was becoming more agitated as time passed.

Officer Two stated that at the point that he fired his rifle, he felt as though his life and the lives of the other officers were in danger.

Officer Three indicated that he took up a position with other officers in front of 1303 4th Street in response to a call of a man with two to three guns who was ex-military and who had PTSD. As he took up that position dispatch aired over the radio that the subject was armed with an AR-15, thus he armed himself with his department-issued AR-15. From his position he saw the suspect with a rifle across his chest and was on the phone. He could see Zavala pacing back and forth in front of his house, and could hear him talking about guns and the police coming.

Officer Three stated that once the officer gave the verbal commands from across the street, Zavala’s attention turned to that area. He and the other officers with whom he was positioned moved from their area of cover and began advancing on Zavala. As they neared Zavala, he thought that Zavala was holding a gun to his own head with his left hand, and he saw Zavala begin to raise his rifle with his right hand. Officer Three then heard a gunshot from across the street, and he began firing at Zavala. At the time he fired, Officer Three stated that he thought Zavala was going to shoot the officers across the street. When Zavala was initially hit, he turned in the direction of Officer Three, causing Officer Three to fear that he was also going to be shot.

A witness named Christopher Holthusen was sleeping in a small trailer located directly in front of 1307 4th Street. Mr. Holthusen was interviewed by a detective from the Greeley Police Department in the early morning hours of August 13. He told detectives that he was awakened by yelling and screaming. After a period of time he heard an unknown voice say “Greeley Police” and then he heard “put down the gun.” Immediately after that statement Mr. Holthusen heard gunfire, and described the number of gunshots he heard as “a few.”

Detectives also interviewed Grace Granados, who was in the home at 1307 4th Street on the morning of August 13. She stated that at about 2:00 a.m., she got out of bed and heard Zavala talking to an unknown person. She checked on him and realized that he was outside of the home and was talking on the phone. She saw another “item” in his hand, but did not realize it was a BB gun. She stated that Zavala was talking very loudly, and was “talking all kinds of stuff,” however was unable to provide detectives with any specific statements. She said that later she went to the front door to tell Zavala to come inside when she saw a person whom she believed was a police officer shine a flashlight from across the street at Zavala.

Anthony Erebia, the person who called 911 earlier that morning, was interviewed shortly after the shooting incident. Erebia stated that he called 911 that morning because Zavala told him to. Erebia asked Zavala why he needed to call 911 and Zavala told him “it was none of his business.” Erebia claimed that when he called 911, the line rang about three times but that no one ever answered so he hung up. He denied making any statements or talking to any dispatcher. He did state that prior to calling 911, he saw Zavala cleaning the BB gun, and that Zavala had drank about 12 beers that night.

LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified. As the evidence establishes that Officers One, Two and Three fired their weapons at Zavala, and that he died as a result of eight gunshot wounds, the determination whether the Officers’ conduct was criminal is primarily a question of legal justification.

C.R.S. 18-1-707(2)(a) establishes when a peace officer can use deadly physical force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes it necessary...to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

In this case, Officers One, Two and Three were dispatched to a report of a man outside his home with multiple firearms, to include an AR-15. The officers received additional information that the suspect was intoxicated, that he suffered from PTSD, and that he may be having delusions about the circumstances under which he was acting. The officers, both while en route to the call, as well as while on scene, were receiving additional information in the form of statements being made by Zavala, ranging from “I am not going to shoot the cops because it is wrong” to “I am going to have a shootout with the officers, and then you will have a civil war on your hands.” The officers, from their positions

of cover, could see and hear the agitated state exhibited by Zavala, and could see what they reasonably believed was a rifle, despite it later being learned was a BB gun. The actions of the officers, including Officers Two and Three arming themselves with department-issued AR-15 rifles, was in response to the information which they received from both Zavala himself and Anthony Erebia.

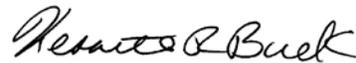
When verbal challenges were issued by an officer across the street, they were sufficiently loud that officers to the east, Christopher Holthusen, and Zavala himself could hear them. Rather than comply with the officers' commands, a command also repeatedly given by the dispatcher, to drop the gun and show the officers his hands, Zavala pointed the rifle at officers across the street. This action reasonably caused Officers One, Two and Three to believe that their lives, and the lives of fellow officers, were in immediate danger, causing each of them to fire their weapons.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Officers One, Two and Three were justified in using deadly force against Zavala because they reasonably believed that it was necessary to defend themselves and others from Zavala's threatened use of physical force.

CONCLUSION

Under C.R.S. 18-1-707(2)(a), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the potentially volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file any charges against Officers One, Two or Three for the use of deadly physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,



Kenneth R. Buck
District Attorney